IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1038 of 2006
To
FIRST APPEAL No. 1040 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HAJI MOHAMAD AALAM HA.HAKIMBHAI VADALIWALA & 1 - Appellant(s)
Versus
MOTIVANI TRADERS & 4 - Defendant(s)

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Appearance :
MR MITESH R AMIN for Appellant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 1, 3.2.1,3.2.2 - 5.
MR HASMUKH THAKKER for Defendant(s) : 2,
None for Defendant(s) : 3,
NOTICE NOT RECD BACK for Defendant(s) : 5,
MR NAGESH C SOOD for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Notice of final disposal was issued by this Court on 19th April, 2006. We have accordingly heard the learned advocates appearing for the parties for final disposal of the appeals.

2. In these appeals, original claimants have challenged the amount of compensation awarded by the Clams Tribunal by a common judgement and three separate awards passed on 30th September, 2005. By the impugned awards passed by Motor Accident Claims Tribunal(Aux.) Himmatnagar, the Tribunal partially allowed the claim petitions nos. 343/1995 to 345/1995 filed by the claimants.

3. On 26th January, 1995, three young men in the age group of 19 to 23 years were travelling on a scooter at which time a truck bearing registration no. RNY 5861 coming from the opposite direction dashed against the Scooter. All the three persons received fatal injuries. The parents of these deceased persons therefore, filed the above mentioned claim petitions seeking compensation of Rs. 5,00,000/- each from the driver, owner and insurer of the truck involved in the accident.

4. From the available material on record, the Tribunal came to the conclusion that the accident occurred on account of sole negligence on part of the truck driver. In coming to such a conclusion, the Tribunal took into account oral as well as documentary evidence. It had come on record that the Scooter was being driven on the correct side of the road at which time the truck came at an excessive speed from the opposite direction and since the truck driver was trying to overtake another vehicle, the truck had travelled on the wrong side of the road and thereby, hit the Scooter and caused the accident.

5. With respect to quantum of compensation, in claim petition no.343/1995(related to First Appeal No.1038/2006) filed by the parents of the deceased Nishar Ahmed Haji aged 19 years, the Tribunal came to the conclusion that the deceased was, at the time of his death, earning Rs. 3,000/- per month. Considering the prospective income at Rs.4500/-, the Tribunal assessed dependency benefits for the claimants at 1/3rd thereof or Rs.1500/- per month. Multiplier of 15 was adopted, considering the age of the claimants being 52 and 48 years respectively. It may be noted that the deceased was aged 19 years on the date of accident. The Tribunal thus, awarded a sum of Rs. 2,70,000/-

(Rs.1500x12x15) for loss of dependency benefits. To this, Tribunal added conventional sum of Rs.20,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. The Tribunal thus, awarded a sum of Rs.2,92,000/- to the claimants in MACP No.343/1995 to be recovered with 7.5% interest per annum from the date of claim petition till realisation.

6. With respect to quantum of compensation, in claim petition no.344/1995(related to First Appeal No.1039/2006) filed by the parents of the deceased Zakirhushen aged 22 years, the Tribunal believed his monthly income at Rs. 1800/- per month, assessed his prospective income at Rs. 2700/- per month, deducted 2/3rd thereof for his personal expenditure and set apart Rs. 900/- per month for the claimants. Again considering the age of the claimants being 48 and 44 years respectively, the Tribunal adopted multiplier of 15 and assessed loss of dependency benefits at Rs. 1,62,000/-(Rs.900x12x15). The Tribunal further added conventional sum of Rs.20,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. Eventually, awarding a sum of Rs. 1,84,000/- to the claimants in MACP No.344/1995 to be recovered with 7.5% interest per annum from the date of claim petition till realisation.

7. With respect to the quantum of compensation,

in claim petition no.345/1995(related to First Appeal No.1040/2006) filed by the parents of the deceased Firozkhan Riyazkhan Mohamad Pathan aged 23 years, the Tribunal believed the monthly income of the deceased at Rs. 1600/- , assessed his prospective income at Rs.2400/- per month and calculated the dependency benefits at Rs. 800/- per month. The Tribunal adopted multiplier of 15, considering the age of the claimants being 45 and 42 years respectively. The Tribunal thus, awarded a sum of Rs. 1,44,000/- (Rs.800x12x15) for dependency benefits. To this, Tribunal added conventional sum of Rs. 20,000/- towards loss of estate and Rs. 2,000/- towards funeral expenses. The Tribunal thus, awarded a sum of Rs.1,66,000/- to the claimants in MACP No.345/1995 to be recovered with 7.5% interest per annum from the date of claim petition till realisation.

8. Before us, learned advocate Mr. Mitesh Amin has challenged the awards passed by the Claims Tribunal as being inadequate. On behalf of the claimants, he submitted that all the three deceased persons were young abled bodied persons and were earning Rs. 3,000/- to Rs. 4,000/- per month on the date of accident. He submitted that the Tribunal has grossly erred in assessment of monthly income as well as dependency benefits in each of the three claim petitions. He submitted that the awards are required to be

enhanced.

9. On the other hand, learned advocate Mr. Hasmukh Thakker for the insurer of the offending truck opposed the appeals and submitted that the assessment of income made by the Claims Tribunal is just and proper and the compensation awarded in the claim petitions call for no interference.

10. Having heard the learned advocates appearing for the parties, we find that the question of negligence of the truck driver in causing the accident is not under challenge before us. Even otherwise, we are in agreement with the conclusions of the Tribunal in this regard.

11. Considering the award passed by the Claims Tribunal in MACP No. 343/1995(related to First Appeal No.1038/2006), we find that there was documentary as well as oral evidence on record to suggest that the deceased was a partner in a partnership firm doing business and was earning about Rs. 3,000/- to Rs. 3,500/- per month. The income-tax returns to this effect was also produced on record. In that view of the matter, the Tribunal was perfectly justified in assessing the prospective income of the deceased at Rs.4500/- per month. It may be noted that the deceased was a young boy and had a long period of active life left. With passage of time, he had every opportunity to increase his earning.

11.1 It may be generally true that when the claimants are the parents of an unmarried male child, only 1/3rd of the monthly income of the deceased should be set apart for the parents. This however, is not the rule of inflexible application. In the present case, the deceased was aged only 19 years. He had several years to go before he would have married and settled down with his own separate family. Until such time, he would have continued to contribute greater portion of his monthly income for joint family expenditure. Considering all these aspects of the matter, we find that in facts of this case, out of Rs. 4500/- per month assessed as monthly prospective income of the deceased, he could have easily set apart Rs. 2,000/- per month for his parents, that would come to Rs.24,000/- per annum. Despite suggestion of the learned advocate Mr. Amin for the appellant that multiplier of 17 should be adopted, taking into account the age of the deceased, we are of the opinion that considering the age of the claimants, multiplier of 15 adopted by the Tribunal is perfectly justified. The appellants would therefore, receive a sum of Rs. 3,60,000/- (Rs.2000x12x15) towards loss of dependency benefits. To this, we may add a sum of Rs.25,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. The appellant would thus, receive total sum of Rs.3,90,000/-

from respondents nos. 1 and 2 jointly and severally. The appellants shall thus receive additional compensation of Rs. 98,000/- from the said respondents. This additional compensation shall carry simple interest at the rate of 9% per annum from the date of claim petition till realisation and proportionate costs.

12. Considering the award passed by the Claims Tribunal in MACP No. 344/1995(related to First Appeal No.1039/2006), we find that the Tribunal erred in assessing monthly income of the deceased at Rs.1800/-. There was evidence on record to suggest that the deceased was in employment of a partnership firm. He was a young man aged 22 years. As a young abled bodied person in full time employment, monthly income of Rs. 2,000/- would not be excessive. Considering the age of the deceased and inflation in economy, with passage of time, his income would have increased. Thus, it would be appropriate to adopt Rs. 3,000/- per month as uniform prospective income of the deceased. The deceased was a young boy, had few years to go before he would have married and settled down with his family. During such period, he would have continued to make greater contribution towards sustaining his parents particularly, when he was living with his parents in a joint family. In facts of this case, therefore, we find it appropriate that monthly dependency for

the family be adopted at Rs. 1500/-. Considering the age of the claimants rather the age of the deceased, multiplier of 15 adopted by the Tribunal is left unchanged. The claimants would therefore, receive a sum of Rs. 2,70,000/- (Rs.1500x12x15) towards loss of dependency benefits. To this, we may add Rs.25,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The claimants would therefore, in all receive Rs. 3,00,000/- from the respondents nos. 1 and 2 jointly and severally. In other words, the claimants shall receive an additional compensation of Rs. 1,16,000/- from the said opponents which shall be paid with proportionate costs and simple interest at the rate of 9% per annum from the date of claim petition till realisation.

13. Considering the award passed by the Claims Tribunal in MACP No. 345/1995(related to First Appeal No.1040/2006), we find that the facts of this claim petition are substantially similar to MACP No.344/1995(related to First Appeal No. 1039/2006). Here also, the Tribunal accepted income of the deceased at Rs.1600/- per month. Considering the fact that the deceased was a young abled bodied person of only 23 years of age and there was evidence to suggest that he was in full time employment as a Salesman in a Hosiery factory, his income should have been believed at Rs. 2,000/- per month. With passage

of time and inflation in the economy, considering the young age of the deceased, he had every chance of increase in his monthly income. We therefore, adopt Rs.3,000/- per month as his prospective income. Here also, looking to the young age of the deceased person and his possibility of having contributed to the family expenses for sometime before getting married and settling down, we adopt a sum of Rs. 1500/- per month as loss of dependency benefits to the claimants. Here again, considering the age of the claimants and not that of the deceased, we maintain multiplier of 15 adopted by the Tribunal. The claimants would therefore, receive Rs. 2,70,000/- (Rs.1500x12x15) towards loss of dependency benefits. To this, we may add Rs. 25,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The claimants would thus in all receive a sum of Rs. 3,00,000/-. The parents will therefore, receive an additional compensation of Rs. 1,34,000/- with proportionate costs and simple interest at the rate of 9% per annum from the date of claim petition till realisation from respondents nos. 1 and 2 jointly and severally.

14. In all the three appeals, the enhanced compensation shall be deposited by respondents nos. 1 and 2 before the Claims Tribunal by 31st March, 2007.

15. Upon such deposit, the Claims Tribunal invest 80% in fixed deposits, near the residence of the claimants, for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank accounts of the claimants to be operated by any power of attorney holder other than a close relative of the claimants.

Remaining amount shall be disbursed in favour of the claimants through Account Payee cheques after due verification and after informing them about the amounts being invested/disbursed and terms and conditions of investment.

16. With these directions, the appeals are partially allowed

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)